HON'BLE SRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G.BHAVANI PRASAD

WRIT APPEAL No.2625 of 2005

Between:

Jamia Masjid, Masjid Hazrath Bilal,

rep. by its President, Mohd.Ismail,

Hyderabad. …Appellant.

AND

Station House Officer, P.S.,

Nacharam, Ranga Reddy District &

others. …Respondents.

:: JUDGMENT ::

Counsel for the Appellant : Sri Mohammad Moin Ahmed Quadri

Counsel for Respondent No.1 : Government Pleader for Home

Counsel for Respondent No.2 : Sri P.Radhakrishna

Counsel for Respondent No.3 : Sri B.Viswanatha Reddy

Counsel for Respondent No.4 : Smt.S.Nanda

5th JANUARY 2006

Per G.S.Singhvi, CJ

This is an appeal for setting aside *ex parte* interim order dated 30-11-2005 passed by the learned Single Judge in WPMP.No.32809 of 2005 (Writ Petition No.25513 of 2005) whereby he directed respondent No.1-Station House Officer-cum-Sub-Inspector of Police, Police Station Nacharam, Ranga Reddy District, to render necessary protection in view of the representation made by the writ petitioner (respondent No.4).

In the writ petition filed by it under Article 226 of the Constitution, respondent No.4 has prayed for grant of a declaration that failure of respondent No.1 to provide necessary help to it to proceed with the construction and to protect its possession and enjoyment over land comprised in Survey No.208/1 and 206/1 (in part) admeasuring 1072 square yards situated at Nacharam Village, Uppal Mandal, Ranga Reddy District is violative of Articles 14, 21 and 300-A of the Constitution. Respondent No.4 has also prayed for issuance of a direction to respondent No.1 to provide necessary help against non-petitioner No.4 (appellant herein). Along with the writ petition, respondent No.1 filed W.P.M.P.No.32809 of 2005 for issuance of interim direction to the official non-petitioners to provide protection in terms of representation dated 21-11-2005.

While issuing notice of W.P.M.P.No.32809 of 2005, the learned Single Judge made the following order:

> "It is the case of the petitioner that the petitioner is the absolute owner and possessor to an extent of land admeasuring Ac.3.00 and 1072 sq. yards in Survey Nos.208/1 and 206/1 (in part) situated at Nacharam Village, Uppal Mandal, Ranga Reddy District, having purchased the same from one Dr.M.Anantha Rami Reddy by virtue of document No.2918/75 dated 6-9-1975 and developed major portion of the property. It is stated that the petitioner filed O.S.No.752 of 1997 on the file of the Principal Junior Civil Judge, Hyderabad (E & N), Ranga Reddy District for grant of perpetual injunction restraining the 2nd respondent from demolishing the compound wall of the remaining portion

(petitioner) and the same was decreed as prayed for by judgment and decree dated
14-8-2003. The petitioner also filed another suit in O.S.No.16 of 1997 on the file of the Prl. Junior Civil Judge, Hyderabad (E & N), Ranga Reddy District, for perpetual injunction restraining respondents 2 and 3 from interfering and causing obstructions to the petitioner from proceeding with his lawful construction over the suit property and the said suit was decreed in favour of the petitioner vide decree and judgment dated 14-8-2003. Pursuant to the said judgment, the petitioner is proceeding to construct building after paying necessary charges to the 2nd respondent. Prior to that, when the members of the 4th respondent started interfering with the construction work, the petitioner filed O.S.No.155 of 1997 on the file of the Principal District Munsif, Ranga Reddy, wherein interim injunction was granted restraining them from interfering with his peaceful possession and enjoyment of the same.

Thereafter, it is stated that an agreement was entered into by way of mutual understanding on 3-7-1997 between the petitioner and the Masjid Committee of the 4th respondent and the 4th respondent agreed the ownership of the petitioner and the petitioner was agreed to provide passage through their land for the purpose of prayer as per request of the 4th respondent. It is stated that when the petitioner started construction in the remaining land, the members of the 4th respondent started interfering and therefore the petitioner filed a report before the Station House Officer, Nacharam Police Station on 21-11-2005 for rendering necessary police protection and appropriate action against the members of the 4th respondent.

The learned counsel for the petitioner also relied on the order in W.P.No.853 of 2005 dated 11-3-2005, which was confirmed in W.A.No.663 of 2005 dated 31-3-2005, wherein this Court while allowing the similar request directed the police to extend necessary help in accordance with law.

When the petitioner is the absolute owner and possessor of the said property, the 4th respondent without any authority of law cannot interfere and obstruct the construction activity of the petitioner. Therefore, whenever a representation is filed about illegal interference it is the duty of the police to protect the interests of rightful owners in accordance with law.

Having regard to the facts and circumstances of the case, the first respondent is directed to render necessary protection in view of the representation made by the petitioner on 21-11-2005."

Sri Mohammad Moin Ahmed Quardi, learned counsel for the appellant argued that direction given by the learned Single Judge to respondent No.1 to provide help to respondent No.4 tantamounts to final adjudication of the writ petition

because on the basis of the help and/or protection provided by the police, respondent No.4 will be able to raise construction over the disputed site and then nothing would remain to be adjudicated in the main petition. He then argued that the order under challenge could not have been passed by the learned Single Judge without giving the appellant notice and opportunity of hearing.

Smt.S. Nanda, learned counsel for respondent No.4 argued that the learned Single Judge did not commit any error by issuing the impugned direction because despite the decree passed by the competent court, the appellant was trying to dispossess her client.

We have considered the respective submissions. Ordinarily, the Division Bench is extremely reluctant to interfere with an interlocutory order passed by the learned Single Judge more so when such an order is purely interim in nature, but, keeping in view the nature of the direction given by the learned Single Judge, which virtually amounts to granting final relief to the writ petitioner and the fact that the said order was passed without issuing notice to the contesting respondent (appellant herein), we have thought it proper to entertain the appeal.

In reply to the Court's query, Mrs.Nanda, learned counsel for the writ petitioner (respondent No.4 herein) fairly stated that the order under challenge was passed by the learned Single Judge without issuing notice to the appellant.

In our opinion, the interim order passed by the learned Single Judge amounts to virtual adjudication of the main petition because on the strength of that order respondent No.4 (writ petitioner) will be able to complete the construction and then nothing would survive for consideration and adjudication in the main petition and such an order could not have been made without hearing the affected person i.e., the appellant. Therefore, we deem it proper to allow the appeal at this stage and remand the case to the learned Single Judge for fresh consideration of the prayer made by respondent No.4 in WPMP.No.32809 of 2005. Ordered accordingly.

The parties are directed to appear before the learned Single Judge on January 23, 2006. The learned Single Judge is requested to decide the prayer of respondent No.4 afresh after giving reasonable opportunity of hearing to the non-applicants in WPMP.No.32809 of 2005 in Writ Petition No.25513 of 2005.

G.S. SINGHVI, CJ

5th January, 2006.

G.BHAVANI PRASAD, J.

ARS / svs